Aspire FEDERAL CREDIT UNION
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February 6, 2012

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Proposed Amendments to 12 CFR Parts 701 and 741

Dear Ms. Rupp:

This is a comment letter to the proposed changes in the loan participation regulation. Loan participations are very important not only to our credit union but to many credit unions around the country. Over the years we have originated and participated-out Home Equity Loans, Mortgage Loans, various types of Student Loans, Commercial Real Estate Loans and Taxi Medallion Loans. Through the use of an “Origination/Participation Model” we have been able to effectively manage our interest rate risk, concentration risk and credit risk while providing a higher level of member loan service, and higher yields for our depositors, than would have otherwise been possible. Our Participants were able to generate much-needed loan volume and income that was not available in their local or secondary markets. The participation rules also allow participating credit unions to focus on balance sheet and asset-class management. Participating credit unions can easily build a diverse portfolio of loans types that manage and mitigate their risks.

I will focus my comments on only a few select areas of the proposed regulation, sections that I consider to be the most problematic.

A credit union may not buy loan participation interests from a single originator that in the aggregate exceeds 25% of the purchasing credit union’s net worth. There is no ability to seek a waiver from this restriction.

The proposal is intended to act as a check-valve, keeping the problems of one originator's loans from crippling a participating credit union. Unfortunately this proposal does not address the underlying issue of concentration risk management and as written will have unintended consequences that do far more damage than the issue it is attempting to resolve.

First, while determining concentration limits are an important factor in a credit union’s overall risk analysis and mitigation program, establishing an arbitrary, nationwide limit such as this without considering the credit unions individual risk management plan and asset mix does little to lower the credit unions risk profile. Concentration limits should be viewed within the context of the participating CUs overall risk management program. Proper due diligence is essential for any credit union entering into any new lending program. Whether it is a credit card program, home equity program or participation program of some type, the credit union must perform its due diligence and consider the

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impact that this loan type has on their balance sheet, strategic plan and ability to provide services to their membership. Similarly, the participant must perform effective due diligence on an originator when considering a loan participation program. Excessive concentrations by originator has very little to do with credit union failures. The originator typically, though not always, performs the function of servicer. Servicing has not been proven to be a significant factor in credit union failures. Rather, it has been the quality of the underlying loan and concentrations in a loan type that are at issue. Poor underwriting, overreliance by the participant on the originators analysis, poor due diligence by the participant and simple over concentration in the asset class by the participant (poor risk management) have played a far more significant role in losses and failures than the mere choice of an originator. Problems such as fraud and weak or non-existent internal controls will undermine the best of loan programs, but proper due diligence by the participant which includes understanding the originator and participation investment will go a long way towards managing and mitigating these risks.

Second, in the case of an originating credit union like Aspire, that originates various types of loans, limiting participations by originator unnecessarily restricts a participating credit union from diversifying their loan portfolio composition and will lead to an otherwise avoidable concentration risk, forcing credit unions to choose one loan type from a particular originator. For example, at Aspire FCU we originate and participate a number of different loan types including Taxi Medallion Loans, Undergraduate Private Student Loans, Consolidation Private Student Loans, Medical School Private Student Loans and Home Equity Loans. Each loan has its own unique underwriting characteristics and risk profile. The risk profile has everything to do with the asset class and very little to do with the originator. Additionally, we source, originate and service these loans across a number of different platforms and service providers in an effort to further manage our risks. We participate these loans to a variety of credit unions. In many cases a participating credit union participates in more than one type of loan in an effort to manage their own risks. This limitation will have the unintended consequence of forcing participating credit unions to limit their participations with us and concentrate on one particular loan type. They would then be forced to seek out other originators and participation opportunities. A credit union that participates in a short-term, variable rate home equity loan program with a particular originator would now be forced to seek out alternatives because of the 25% limitation. These alternatives would include higher-risk indirect car loans and commercial real estate loans. This rule change, as proposed, would expose this participating credit union to higher credit risk, lower net interest yield and more risk to the insurance fund.

Third, overall credit union yields would fall. This rule increases the costs of due diligence. In the previous paragraph I referred to the participating credit union's requirement to perform due diligence on a number of originators. This change would force participating credit unions to develop and manage multiple relationships. The paperwork burden alone in managing these many, small-dollar relationships would be excessive. Many smaller credit unions would simply avoid participation programs altogether, concluding that the due diligence costs are not justified due to the limitations on the origination relationship imposed by the rule. This not only raises the costs of due diligence, it concentrates those costs on a smaller number of loans thereby decreasing yields. This also causes unnecessary risk to the insurance fund through reduced net income. These credit unions would turn back to the secondary securities market and the sub-par yields available there. This aspect of the cooperative nature of credit unions, aggregating our resources to the benefit of our member, our organization and our sister credit unions would be thwarted by the proposed rule.

My fourth concern is regarding the impact of this rule on CUSO operations. In some instances our CUSO originates a loan and participates it to us (the borrower is a member of our credit union). We then participate that loan to other credit unions. In this example, is the CUSO the originator for purposes of the cap? Are we limited from buying loans from our own CUSO? Does this rule apply if the participating credit union is an owner of the CUSO? The expertise and focus of the CUSO on a particular loan type benefits all involved. This scenario also leads to the issue of re-participations. What is the impact on a non-originating credit union's ability to re-participate a loan to another participant? Does the participating credit union's cap apply to a loan purchased from the interim participating credit union? Reparticipations are an important liquidity tool for a participating credit union.

Fifth, not having a waiver option unnecessarily limits a well-performing credit union from growing its loan program and decreases the value of the credit union charter.

Finally, NCUA is limiting a "well-capitalized" credit union's actions based on their level of Net Worth. Specifically, a "25% of Net Worth Limitation" requirement is counter to the meaning of Section 216 of the Federal Credit Union Act. Section 216 of the Act refers to the Agency's obligation to construct regulations relating to Prompt Corrective Action. Section 216 of the Act generally requires the Agency's regulation be designed to encourage credit unions to become "well capitalized". Well Capitalized is defined as having "a net worth ratio of not less than 7%". PCA, for the first time, identified and mandated specific acceptable levels of Net Worth. The PCA section of the Act and Section 702 of NCUA's Rules and Regulations discuss in great detail the actions available to NCUA and the consequences to a credit union of failing to meet specific Net Worth targets. Notably, there are no restrictions or limitations on a credit union that meets or exceeds the 7% well capitalized threshold. Consequently, the portion of a credit union's capital that exceeds the 7% requirement is essentially unrestricted capital. A well-capitalized credit union has always had a legitimate right to properly use its excess capital for the benefit of its members. The credit union could return this portion of its capital to its members in the form of interest rebates and bonus dividends without NCUA approval or interference, if it so desired. Since a credit union could return this capital to members and thereby not reap the benefits of its accumulation, the credit union should be free to invest 100% of any capital in excess of 7% in any loan, participation or for any other purpose, subject to applicable laws. PCA tells us that NCUA cannot mandate a credit unions use of its capital in excess of 7% (arguably when capital exceeds 6%, which is 'Adequately Capitalized') and any amount of capital above this amount should be freely available for use or investment as the credit unions board of directors see fit.

The Proposed Rule specifies certain requirements in the Loan Participation Agreement. The rule states that we must identify the location of and custodian for the original loan documents.

In our credit union many of our loan documents are electronically generated and signed as permitted under the e-Sign Act. We do not produce a paper document that is stored in a particular room in an office building. The documents are in what is effectively a virtual records vault. In other instances, when we do produce a printed document containing a wet signature, the original documents are destroyed after imaging and archiving in accordance with the Act. The image files of these documents are all available, online, to the participants. Under the proposed rule, how would we identify the location of these documents? Would these rules supersede the e-Sign Act? Would we be required to create or retain paper documents to comply with this change?

The rule also calls for written loan participation agreement that includes an "Access to Information" provision.

This provision requires further clarification. Our loan participation agreements give the participating credit union access to all documents and reports pertinent to their loan investment. Will this provision require that an originating credit union share its NCUA examination and CAMEL rating and internal audit results with the participant? What level of information-sharing does this rule change require?

Clarification of comments regarding pools of loans.
The proposed Section 701.22 states that the loan participations do “not include the purchase of an investment interest in a pool of loans.” In the comments to Part 701.22(c), it states, “This provision clarifies the existing prohibition against an FCU purchasing a participation certificate in a pool of loans.” As I understand it, loan participations are permitted if a group of loans is purchased as long as loan participation interests are conveyed for each loan and not a single loan participation interest in the aggregate group or pool. I recommend clarifying this as it will cause confusion.

Regarding organizations eligible to buy a loan participation interest.
Is there a safety and soundness reason to prohibit the sale of a participation interest to a non-financial institution such as an insurance company? If a credit union could sell to institutional investors, there would be an opportunity to bring in more liquidity from outside the credit union marketplace to serve members.

In summary, I appreciate the Agency’s goal to enhance the risk management efforts of credit unions. Unfortunately, I believe this rule misses the mark and attempts to impose concentration limits by controlling credit union relationships when the real risk is better controlled by a properly managed Enterprise Risk Management program. Evaluating a credit union’s Asset Liability Management Program and their application of concentration limits by Asset Class, Interest Rate, Liquidity and overall Balance Sheet structure would create real benefits to credit unions and the NCUSIF.

I thank you for the opportunity to comment on this important proposal.

Very Truly Yours,

Thomas J O'Shea
President/CEO

cc: Board of Directors, Aspire FCU,
Paul Gentile, President/CEO, NJCUL
William Mellin, President/CEO, CUA NY